

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 85 of 1995

in

SPECIAL CIVIL APPLICATION No 11091 of 1994

with

Civil Application No. 439 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGDISHBHAI DADUBHAI AMIN

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR

Appearance:

MR PM BHATT for Appellants

MR MA BUKHARI AGP for respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 05/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Admitted. Mr. M.A. Bukhari, learned A.G.P. appears and waives service of notice of admission on behalf of

respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against summary dismissal of Special Civil Application No. 11091 of 1994 on September 20, 1994.

The appellants are the original petitioners. They filed the above petition for following reliefs in terms of para 11 which reads as under:

"(A) Your Lordships be graciously pleased to admit this petition and quash impugned order Annex.A dated 16.2.87 as well as impugned judgment Annexure B dated 19.1.89 and an appropriate, direction or order quashing both the impugned orders Annexure A & B be directed to be issued to respondents in that behalf.

(B) Any other appropriate relief as may deem just in the circumstances of this case be also granted to the petitioners.

(C) Pending admission hearing and final disposal of this petition, Your Lordships be graciously pleased to stay the execution and further proceedings arising from impugned orders Annexure A & B, and, an appropriate writ, direction or order be directed to be issued to respondents in that behalf."

When the matter came up for hearing, learned Single Judge passed following order:

"The petitioners cannot be permitted to challenge the order passed by and on behalf of respondent No.4 rejecting the application for exemption under Section 20 (1) of the Urban Land (Ceiling & Regulation) Act, 1976 on the ground of raising an Industrial Unit. The reason there for is quite simple. The industrial unit does not belong to the petitioners. The industrial unit has been established by one Samaria Textile Private Limited on the basis of a Banakhat of a disputed land executed by the present petitioners in their favour.

The appellate order passed by respondent No.2 at Annexure B to this petition is sought to be

challenged more than 5 1/2 years after the date of its passing on 19th January, 1989. The petitioners cannot be permitted to take an advantage of the litigation instituted by the Banakhat-holder Samaria Textile Private Limited challenging the same.

I have found no merit or substance in this petition. It is, therefore, summarily rejected."

Learned counsel for the appellants submitted that there is an error apparent on the face of the record committed by the learned Single Judge in proceeding that the grievance of the petitioners was in respect of an application filed under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 ('the Act' for short). He submitted that the grievance of the petitioners was against an order declaring excess land which was carried in appeal which was dismissed. The learned Single Judge, therefore, ought not to have proceeded with the matter treating the same as an application under Section 20 of the Act. Learned counsel for the appellant stated that application under Section 20 (1) of the Act is still pending.

Without expressing any opinion on merits of the matter, the appeal deserves to be allowed. In our opinion, limited inquiry before the learned Single Judge was regarding legality and validity of the order passed by the Competent Authority and confirmed in appeal. The learned Single Judge, hence, ought to have considered and decided only that question. On that ground alone, this LPA is allowed. The matter will now go back to learned Single Judge who will decide the same in accordance with law. No order as to costs.

We may state that we have not expressed any opinion on merits of the matter nor on pending application under Section 20 (1) of the Act.

No order on Civil Application.

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